

NTSB Order No. EA-3954

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 3rd day of August, 1993

Respondent .

Docket SE-11703

¹An excerpt from the transcript containing the initial decision is attached.

of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 91.² The law judge did not, however, affirm an additional allegation of a violation of FAR section 121.315(c), 14 C.F.R. Part 121,³ and sanction was waived by the Administrator as a result of respondent's timely filing of a report under the provisions of the Aviation Safety Reporting Program (ASRP).

The Administrator's order, which served as the complaint in this matter, alleged in pertinent part as follows:

2. On or about January 18, 1989, you acted as pilot-in-command of civil aircraft N509AW, a Fokker F-27, being operated as Flight number 2951, a regularly-scheduled passenger-carrying flight, in air transportation from Champaign-Urbana Airport, Illinois.

3. Shortly after you began your taxi at that airport, smoke entered the aircraft cockpit and cabin.

4. As a result, the aircraft was stopped and the passengers deplaned.

5. Upon inspection of the aircraft, it was discovered that the right engine blower inlet cover was still in place.

6. The failure to remove that cover allowed the blower to overheat and cause smoke to enter the aircraft cabin and cockpit.

7. You failed to assure that an adequate preflight inspection had been performed on this aircraft prior to commencing this flight.

8. The blower inlet cover is one of the items that must be

²FAR section 91.9 [now recodified as § 91.13(a)] provides as follows:

"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³FAR § 121.315(c) requires flight crews to adhere to approved cockpit check procedures.

checked as set forth in the company's cockpit check procedure and pilot handbook.

9. Your company's operations manual places the burden for proper completion of the preflight inspection on the pilot-in-command.

10. Your operation of the aircraft was careless and endangered the life and property of others.

The evidence of record establishes that, in accordance with company procedures, when an aircraft is parked overnight the ground crew is required to cover each opening of the aircraft with a fitted cover, in order to prevent birds, bird's nests or other debris, or an accumulation of ice and snow, from building up overnight on the aircraft. It is also the ground crew's duty⁴ to remove each cover in the morning, before the aircraft is preflighted by the flight crew. On this particular day in question, the ground crew failed to remove one cover.

When respondent arrived at the airport on the morning in question, he performed a walk-around inspection of the aircraft.

It was admittedly very dark outside, but he utilized a large, high-powered flashlight. Respondent failed to observe that the cover was still on the right engine blower inlet. After performing the walk-around, respondent asked the station manager if they were "all set." The station manager replied affirmatively, and respondent entered the cockpit. After the incident, as described in the complaint, above, respondent, his first officer, and the station manager examined the aircraft.

⁴At the time of the incident, there were no written procedures for the ground crew.

They then saw the cover, which is orange and which has an orange streamer hanging from it.⁵ The first officer pulled the cover off by reaching up and pulling on the streamer. Respondent believes he did not see the streamer because it had blown up over the wing when he did his walk-around.

Respondent does not dispute that he had the responsibility to perform a thorough and systematic review of the aircraft's general condition for safe flight during his walk-around inspection. He asserts, however, that he should not be held responsible under the Federal Aviation Regulations because there was no specific checklist item which he failed to check, nor was there any evidence that a violation of a custom or practice occurred. Respondent also asserts that he had a right to rely on the ground crew to properly perform their duties.⁶ For the reasons that follow, we will deny the appeal.

The Director of Flight Operations for respondent's employer, Air Wisconsin, sponsored into evidence an excerpt of the pilot handbook for the F-27 containing the preflight checklist.

⁵Respondent argued at the hearing that the cover was black with grease, thus obscuring it from his view. The law judge rejected his contention, based on her view of the cover and her evaluation of photographs taken by respondent which purport to simulate the lighting conditions during his walk-around. Respondent contends on appeal that the cover placed in evidence is not the one he failed to observe, but there is sufficient evidence in the record that the cover in evidence is the one removed from the aircraft by the first officer that day. Moreover, we reject respondent's attempts to disparage the law judge's observations of the demonstrative evidence. We find her findings of fact reasonable, and adopt them as our own.

⁶The Administrator has filed a reply brief, urging the Board to affirm the initial decision.

(Exhibit A-5). The checklist generally instructs the pilot to "note the general overall appearance of the airplane for indications of defective, maladjusted or insecure installation."

It specifically instructs the pilot to insure that all engine "intakes" are clear. Much of respondent's arguments rest on his insistence that the cover he missed was over an "inlet," not an "intake," and therefore he had no responsibility to observe this cover. Respondent's argument is unavailing. Both the Director of Flight Operations and an FAA Inspector testified that these terms for openings on an aircraft are synonymous. Even respondent's own witness, a First Officer with Air Wisconsin, testified that inlets and intakes are interchangeable terms. (TR-139). Indeed, twice in his testimony, respondent used the terms interchangeably himself. (TR-187; 202). Thus, we concur in the law judge's finding that the blower inlet was an item which was included on the preflight checklist.⁷

Respondent argues, nonetheless, that he did not even know that the covers were placed on the aircraft at night, so he could not be required to insure that they were removed before flight. However, respondent's own witness refutes this claim. First Officer Welder testified that in Air Wisconsin's ground school training, he had been taught to check and remove all covers. (TR-133). In any event, the witnesses all agreed that during a walk-around inspection, the pilot must look at all openings. As

⁷The Administrator did not appeal the law judge's finding that there was no evidence of "cockpit check procedures" so as to support the allegation of a violation of FAR §121.315(c).

the Director of Flight Operations states, "it's part of what we would call airmanship." (TR-49). First Officer Weldor agreed. He testified that when a pilot performs a walk-around he should look to see if all openings are reasonably clear. "Wherever there was an opening in the airplane, it must be clear." (TR-143). Furthermore, respondent admitted when questioned by the law judge that he knew there was an opening in that part of the aircraft. We think the law judge's conclusion that he simply failed to look there, or did not raise his flashlight high enough to see the cover, was reasonable under the circumstances, and is sufficient to support the finding of carelessness under FAR section 91.9.

Finally, we reject respondent's claim that he could rely on the ground crew to perform their duties properly. We do not think that the facts before us even raise an issue of reliance on the ground crew's performance of their duties.⁸ See Administrator v. Hughes, NTSB Order No. EA-2866 at 6 (1989)("Although a pilot in command may be able to rely on other personnel to properly perform their duties in certain situations, he may not blindly make such an assumption in all cases."). Respondent had an independent duty to perform his walk-around inspection properly. As the Director of Flight Operations testified, the walk-around is a "safety net...it is our responsibility to go around and see that this other person has

⁸Respondent asked the station manager if the aircraft was ready after he performed his walk-around, not before.

definitely done their job...." (TR-53). We concur with the law judge's determination that respondent breached that duty.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order, as modified by the initial decision, and the initial decision are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.